

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed adoption)	NOTICE OF PUBLIC HEARING
of New Rules I through XVIII pertaining)	ON PROPOSED ADOPTION
to the selection, implementation, and)	
reporting of real estate projects on state)	
trust lands)	

To: All Concerned Persons

1. On October 2, 2008, at 2:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the DNRC Bannack Conference Room, 1625 Eleventh Avenue, Helena, Montana, to consider the adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on September 30, 2008, to advise the agency of the nature of the accommodation that you need. Please contact Ethan Stapp, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT, 59620; telephone (406) 444-0518; fax (406) 444-2684; or e-mail estapp2@mt.gov.

3. The rules proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply, except where the context clearly indicates otherwise:

- (1) "Board" means the state Board of Land Commissioners.
- (2) "Bureau" means the Real Estate Management Bureau of the Trust Lands Management Division of the Department of Natural Resources and Conservation.
- (3) "Cluster development" means a subdivision of a tract with building lots concentrated on a portion of the tract and the remainder conserved for open space.
- (4) "Commercial" means the operation by any for-profit entity of any public parking lot, restaurant, bar, hotel, motel, office space, retail store or sales outlet, storage space, gas station, convenience store, shopping center, industrial enterprise, warehouse, hospitality enterprise, or concentrated recreational use, multifamily residential use, or other similar uses.
- (5) "Conservation" means a land use for open space, preservation of habitat, natural areas, parks, or related public purposes, secured through lease, license, easement, or other legal instrument consistent with 77-1-203, MCA, for multiple use management. Limited commercial or residential uses may be allowed in conjunction with conservation uses.
- (6) "Conservation entity" means a public entity or private organization qualified per Title 76, chapter 6, MCA, to acquire or designate interests and rights in real property to provide or preserve open space.

(7) "Department" means the Department of Natural Resources and Conservation.

(8) "Division" means the Trust Land Management Division of the department.

(9) "Entitlement" means an approval or permit obtained from a local government that provides a right to annex, zone, or subdivide a tract of land.

(10) "Environmental review" means a written document as defined in 75-1-220(4), MCA.

(11) "Growth policy" means a document adopted under Title 76, chapter 1, part 6, MCA.

(12) "Isolated tract or land" means any state land not possessing a legal right of access by the public, as provided in 77-2-361(1), MCA.

(13) "Joint venture" means a partnership between the department and another entity or entities to undertake a development project, each contributing equity and sharing in the revenues, expenses, and control of the project.

(14) "Land classification" means categorizing land according to its principal value, as defined in 77-1-401, MCA.

(15) "Lease" means a contract by which the board conveys a limited property interest in state lands for a term of years, for a specified rental, and for a use for which the land is classified.

(16) "License" means a contract by which the department conveys a limited property interest in state lands for a specific term and fee, and for a use other than that for which the land is classified.

(17) "MEPA" means The Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA.

(18) "Other (land)" means a land classification that encompasses residential, commercial, industrial, and conservation uses.

(19) "Project" means a proposal to issue a lease or easement for a commercial, residential, or conservation use on a tract where no such lease or easement existed previously, when the one or more of the following are required by a local government in order for the lease or easement to be issued as proposed:

(a) final subdivision approval;

(b) annexation; or

(c) development or amendment of a growth policy or neighborhood plan.

Project also means the development of entitlements on lands proposed for sale or exchange.

(20) "Public entity" means a federal agency, state agency, a political subdivision of the state including a county, city, town, municipal corporation, a school district or other special district, a joint agreement entity, a public authority, or any other public body of this or other state.

(21) "Public facility" means a building or area operated by a public entity.

(22) "Purchase of development rights" means acquiring one or more of the fee-simple interests associated with a parcel of land, such as the commercial or residential development rights.

(23) "Rate of return" means the ratio of income received from a project relative to the value of the asset or equity contribution, expressed as a percentage.

(24) "Real estate activities" means the following:

(a) land sales and land banking;

- (b) land exchanges;
- (c) issuance of easements;
- (d) issuance of leases;
- (e) issuance of land use licenses;
- (f) marketing of state trust lands proposed for lease, license, or easement, sale, or exchange;
- (g) requests for proposals;
- (h) planning and design;
- (i) surveying and platting;
- (j) development of entitlements;
- (k) extension of services and infrastructure;
- (l) contracting for services; and
- (m) environmental review.

(25) "Real Estate Management Plan (plan)" means the PEIS for real estate for the department and the associated Record of Decision (ROD) approved July 18, 2005.

(26) "Receiving area" means land that receives additional development rights from land within a sending area. This is a component of a program providing for the transfer of development rights.

(27) "Residential" means single family dwellings, duplexes, condominiums, townhouses, cabins, associated ancillary uses, or other residential uses recognized by local zoning regulations.

(28) "Rural" means a tract that does not meet the criteria for an urban tract.

(29) "Sending area" means land that provides additional development rights to other land within a receiving area. This is a component of a program providing for the transfer of development rights.

(30) "Subdivision" means a division of land defined by 76-3-103(15), MCA.

(31) "Subdivision review" means a city, town, or county governing body evaluating a subdivision proposal for compliance with the jurisdiction's subdivision regulations.

(32) "Threshold" means a predefined target for acres of trust land to be developed for commercial or residential uses that, if met before July 18, 2025, may require a programmatic review of the plan.

(33) "Tract" means a parcel of land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office or in the department's records.

(34) "Transfer of development rights" means separating some or all of the development rights from a parcel of land in a "sending area" and transferring those rights to a parcel in a "receiving area," where additional development density is allowed.

(35) "Urban" means a tract meeting one or more of the following criteria:

- (a) within the boundaries of an incorporated city or town;
- (b) within 4.5 miles of the boundaries of an incorporated city or town;
- (c) within a public sewer or water district; or
- (d) within one mile of the boundaries of a public sewer or water district. An entire tract of state trust land is urban if any portion of the tract falls within an area described in (35)(a) through (d).

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-904, MCA

REASONABLE NECESSITY: This rule is necessary to define terms used in the body of NEW RULES II through XVIII.

NEW RULE II ACCOUNTABLE PARTIES (1) The board adopts the rules in this subchapter to provide the Trust Land Management Division of the Montana Department of Natural Resources and Conservation with consistent policy, direction, and guidance when selecting and implementing Real Estate Management Bureau projects on state trust lands.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-904, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to provide the Trust Land Management Division with rules to assist in the implementation of real estate projects on state trust lands.

NEW RULE III GENERAL APPLICABILITY (1) The Real Estate Management Plan (plan) rules, [NEW RULE I] through [NEW RULE XVIII], implement the Programmatic Environmental Impact Statement (PEIS) and the associated Record of Decision (ROD) adopted July 18, 2005.

(2) The department shall exempt projects from [NEW RULE I] through [NEW RULE XVII] that, prior to adoption of the ROD, have been subject to public scoping and environmental review processes under MEPA, section 75-1-201, et seq., MCA; or

(a) received all local government approvals necessary for the completion of the project.

(3) The department shall exempt from [NEW RULE I] through [NEW RULE XVII]:

- (a) lease lots created prior to adoption of the ROD; and
- (b) land use licenses.

(4) These rules shall not apply where it is determined that their application would directly violate the state's fiduciary duty to a trust beneficiary under Article X, Section 4 or 11, of the Montana Constitution, or Section 11 of the Montana Enabling Act.

(5) These rules remain in effect until July 18, 2025, whereupon they shall expire.

AUTH: 77-1-209, 77-1-301, 77-1-603, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish the applicability of NEW RULES I through XVII, and to establish the date on which these rules will expire. This rule is consistent with the standards set forth in the

Programmatic Environmental Impact Statement, Record of Decision (ROD). The department director adopted the ROD July 18, 2005.

- NEW RULE IV GENERAL DEVELOPMENT STANDARDS** (1) The department will actively pursue commercial, residential, and conservation uses to increase revenue on trust lands, through one or more of the following means:
- (a) targeting those tracts most suitable for development;
 - (b) improving entitlements on tracts selected for sale or development, when appropriate; and
 - (c) prioritizing projects with the highest financial return per acre.
- (2) The department will give priority to urban projects over rural projects using the following criteria:
- (a) financial rate of return per acre; and
 - (b) funding availability.
- (3) The department will implement the following standards when selecting, designing, and implementing projects on state trust lands, whenever appropriate and feasible:
- (a) projects should be contiguous to or part of existing or proposed development;
 - (b) projects in urban locations must connect to existing public infrastructure and be designed to public standards, including alignment to adjoining public and private streets;
 - (c) urban projects should achieve urban densities;
 - (d) the department will promote mixed use in urban locations through planned-unit development or other means provided by local land-use regulations;
 - (e) the department will comply with local land-use regulations in developing commercial, residential, and conservation uses on state trust lands;
 - (f) the department will utilize local land use planning and regulatory processes to involve the general public and beneficiaries in developing state trust lands for commercial, residential, and conservation uses;
 - (g) the department will coordinate environmental review with local regulatory review;
 - (h) the department may use or promote purchase of development rights, transfer of development rights, cluster development, joint ventures, or other measures; and
 - (i) the department will coordinate with local communities, other state and federal agencies, conservation agencies, and other interest groups to provide for notice and review as necessary.
- (4) Any commercial or residential lease expected to generate annual revenue in excess of \$50,000 may not be issued without the board's prior approval.
- (a) The board delegates its authority to the department to issue commercial leases expected to generate \$50,000 or less annually, but the board reserves the authority to subsequently review the issuance of such leases.

AUTH: 77-1-209, 77-1-301, 77-1-603, MCA
IMP: 77-1-605, 77-1-904, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish the standards to be applied by the department in development of commercial, residential, and conservation uses on state trust lands. This rule also establishes that the department will have the authority, subject to review by the Land Board, to issue commercial leases expected to generate \$50,000 or less annually. This rule is consistent with the standards set forth in ROD.

NEW RULE V PROJECT EVALUATION, REVIEW, AND SELECTION PROCESS (1) [NEW RULE VI] through [NEW RULE X] describe the evaluation, review, and selection process for projects on state trust lands.

(2) The department will require [NEW RULE VI] through [NEW RULE X] for projects initiated following [the effective date of these rules].

(3) The individual real estate activities that together culminate in a lease or easement are cumulatively referred to as a project.

(a) The department will not require [NEW RULE VI] through [NEW RULE X] for an individual real estate activity that:

(i) is consistent with a larger project that has undergone project evaluation and review as described in [NEW RULE VI] through [NEW RULE X]; and

(ii) has been approved by the project identification team described in [NEW RULE VIII].

AUTH: 77-1-209, 77-1-301, 77-1-603, MCA

IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish that "projects" as defined in NEW RULE I will go through the process described in NEW RULE VI through NEW RULE X. It is not mandatory for a department activity to meet the requirements of NEW RULE VI through NEW RULE X if it does not fall within the definition of a project.

NEW RULE VI SITE-SPECIFIC EVALUATION (1) The department will conduct a site-specific evaluation to assess the suitability of a tract or portion of a tract proposed for a project. The site-specific evaluation may include the following factors:

- (a) unique or sensitive biological and physical features;
- (b) topography;
- (c) influence of floodplains and/or wetlands;
- (d) hazardous geologic conditions;
- (e) known cultural or historic features through a preliminary cultural survey;
- (f) proximity to other public lands or private lands under conservation easement, as documented by information in the Montana Natural Heritage Program database or similar source;
- (g) water availability and water rights;
- (h) existing and required access;
- (i) the location of infrastructure, such as roads, utilities, power, telephone, public water, or sewer availability;
- (j) any existing encumbrances;

- (k) proximity to community infrastructure and utilities; and
- (l) other nearby residential or commercial development, proposed or existing.
- (2) The department will analyze federal, state, and local land-use regulations, plans, and policies, for their relationship to the proposed project. This analysis must identify existing entitlements and any entitlements that must be acquired for the proposed project to achieve the highest return.
- (3) The department may conduct a market analysis for a parcel proposed for commercial, residential, or conservation use. At minimum, the market analysis must identify:
 - (a) the size of the current and future residential and commercial market;
 - (b) market-growth trends, historic and future; and
 - (c) expected rate of return.
- (4) The department will promote appropriate development on state trust land by generally excluding from consideration:
 - (a) residential and commercial uses on slopes greater than 25 percent;
 - (b) residential and commercial projects that would be located in a designated 100-year floodplain or wetland; and
 - (c) most commercial or residential projects that would adversely affect federally listed threatened and endangered species or critical habitat for threatened and endangered species as designated by the United States Fish and Wildlife Service (USFWS).

AUTH: 77-1-209, 77-1-301, 77-1-603, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish the criteria that will be considered by the department when evaluating individual project proposals on state trust lands. This rule is consistent with the ROD.

NEW RULE VII SITE SELECTION REPORT (1) Field staff will develop a site selection report for each project proposal that will include these elements:

- (a) how the proposed project conforms to the standards in [NEW RULE IV];
- (b) description of the proposed project, including proposed land use, density, existing and proposed entitlements, required infrastructure improvements, local regulatory approval required, and potential rates of return from the project, if implemented;
- (c) how the proposed project relates to [NEW RULE XI] and [NEW RULE XII];
- (d) results of the site-specific evaluation;
- (e) estimate of the costs and timeline for the proposed project; and
- (f) how the proposed project integrates with other trust land management projects or programs.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish that department field staff will develop a report for each project proposal being considered, and to describe the elements that will be included in the report. This rule is consistent with the ROD.

NEW RULE VIII PROJECT IDENTIFICATION TEAM AND PROJECT REVIEW COMMITTEE

(1) The department will form a project identification team, comprised of, but not limited to bureau staff and field representatives.

(2) The project identification team will meet annually, at minimum. The duties of the project identification team will include:

- (a) reviewing and selecting projects proposed by field staff;
- (b) reviewing the status of previously selected projects;
- (c) canceling previously selected projects; and
- (d) assigning resources.

(3) The project identification team will select projects based upon review of the site selection reports developed by field staff under [NEW RULE VII], in consideration of the following criteria:

- (a) conformance to the standards in [NEW RULE IV];
- (b) relationship to [NEW RULE XI and XII];
- (c) results of the site-specific evaluation;
- (d) results of the market analysis, as described in [NEW RULE VI(3)];
- (e) staffing and funding needs and limitations;
- (f) project complexity;
- (g) project timeline; and
- (h) how the proposed project integrates with other trust land management projects or programs.

(4) The department will form a project review committee, comprised of bureau staff and planning and land use staff from each area office. The project review committee will meet annually, at minimum. The duties of the project identification team will include:

- (a) reviewing the status of previously selected projects;
- (b) assessing resource needs of projects; and
- (c) recommending project proposals to the project identification team.

AUTH: 77-1-209, 77-1-301, MCA

IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish a project identification team and project review committee, and to describe the duties of each. This rule is consistent with the ROD.

NEW RULE IX PROJECT MANAGEMENT LIST (1) The department will provide to the board a list of the projects selected by the project identification team within 30 days, and concurrently send the list to:

- (a) affected lessees and licensees;
- (b) local governments having jurisdiction over the area of a selected project;
- (c) public and private conservation entities; and

- (d) other interested parties.
- (2) The department will post the list on the department's web site.

AUTH: 77-1-209, 77-1-301, MCA

IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to delineate the process by which the department will inform the Land Board and the public at large when commercial, residential, and conservation projects are proposed on school trust lands. This rule is consistent with the ROD.

NEW RULE X NOTIFICATION OF CONSERVATION INTEREST (1) After posting a project management list on the department's web site pursuant to [NEW RULE VIII], the department shall allow conservation entities 60 days in which to propose a conservation use of those lands by issuing a letter of intent to the department. By such a letter of intent, an entity may seek to secure for conservation uses any tract or portion of a tract proposed by the project identification team for a residential or commercial use.

(2) A conservation entity submitting a letter of conservation intent during the 60 days has an additional 45 days in which to apply to the department for a lease, license, easement, or other approved legal instrument to secure conservation use, as approved by the department. The 45 days begin on the day following the last day of the 60-day period. An entity applying within the 45-day period has 12 months to secure conservation use. The department may extend the 12 month period.

(a) The department may require bonding, letter of credit, or nonrefundable deposit as part of the application for a conservation use.

(3) Any project on the project management list may proceed forward if:

(a) the department receives no letter of intent within the 60-day period;

(b) a conservation entity submits a letter of intent within the 60 days but fails to apply to the department within the subsequent 45 days; or

(c) a conservation entity submits a letter of intent and application within the applicable periods but fails to secure conservation use on the subject property within 12 months, unless the department has granted an extension.

AUTH: 77-1-209, 77-1-301, MCA

IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to implement the ROD provisions for informing conservation entities in advance of initiating a commercial or residential project on state trust land. Entities may respond with a letter of interest to secure a conservation use, and are given specific periods of time to apply for a conservation interest and complete the transaction. This rule is consistent with the ROD.

NEW RULE XI NEW DEVELOPMENT THRESHOLDS (1) If the aggregate acreage of real estate activities described in (2) exceeds, or is anticipated to exceed

during the term of the plan, 30,000 acres, the department will conduct a programmatic review of the plan before any additional projects may be developed.

(a) The department will also conduct a programmatic review of the plan before any additional projects may be developed, if the aggregate acreage in rural areas exceeds, or is anticipated to exceed during the term of the plan, five percent of the 30,000-acre statewide threshold.

(2) The following, as a result of new projects developed after July 18, 2005, will count toward the thresholds in (1) and (2):

(a) tracts leased or under easement for commercial uses;

(b) tracts leased or under easement for residential uses at a density greater than one residential unit per 25 acres;

(c) tracts disposed of through sale or exchange, and subdivided or developed for a commercial use within five years following sale; and

(d) tracts disposed of through sale or exchange, and subdivided or developed for residential use at a density greater than one residential unit per 25 acres within five years following sale.

AUTH: 77-1-209, 77-1-301, MCA

IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: It is reasonably necessary to adopt this new rule to establish that a programmatic review of the plan may be necessary when the acreage thresholds provided in the ROD are met. Setting forth the requirements will enable staff to reevaluate the plan in compliance with the ROD findings. This rule is consistent with the ROD.

NEW RULE XII NEW DEVELOPMENT THRESHOLD EXEMPTIONS

(1) The following will be exempt from the thresholds in [NEW RULE XI(1)]:

(a) leases, sales, exchanges, and easements to a public entity, for a public facility, community service, public benefit, or for a private sewer or water system;

(b) acres under lease or easement for communications facilities, or for wind, geothermal, or solar power generation;

(c) acres under easement for public or private rights-of-way;

(d) acres secured for conservation use;

(e) tracts disposed of through sale or exchange with restrictions limiting residential density to one residential unit per 25 acres, or limiting development to not more than 25 percent of the tract and designating the remainder as open space;

(f) isolated tracts sold or exchanged;

(g) acres dedicated as open space during subdivision review in excess of minimum state and local requirements;

(h) tracts subdivided for residential lease or easement, limiting density to one residential unit per 25 acres, or limiting development to 25 percent of the tract and designating the remainder as open space;

(i) tracts within a receiving area established by a local jurisdiction as part of a transfer of development rights program, and subdivided for residential use using development rights transferred from land in the sending area; and

(j) tracts subdivided for residential development at a density greater than one unit per 25 acres using development rights transferred, at a rate of one development right per 25 acres of lands protected, from another tract of state trust land. This exemption applies to lands subdivided for lease, easement, or sale, and includes lands subdivided within five years following sale.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: The ROD exempts certain activities from the thresholds. This rule is reasonably necessary to establish those exemptions. This rule is consistent with the ROD.

NEW RULE XIII ACCOUNTING AND REPORTING (1) The department will account for real estate management activities that meet [NEW RULE X] and [NEW RULE XI]. In addition, the department will account for the following:

- (a) acres under commercial or residential lease where no commercial or residential lease existed previously;
 - (b) acres under easement for commercial or residential use;
 - (c) nonisolated tracts sold and subdivided for residential or commercial use within five years of sale;
 - (d) tracts acquired with existing commercial or residential development;
 - (e) tracts, or portions of tracts, encumbered or purchased with an existing conservation lease, license, easement, or other means of securing conservation uses;
 - (f) nonisolated tracts sold and encumbered with a restriction on development for conservation uses within five years of sale;
 - (g) acres dedicated as open space during subdivision review in excess of minimum requirement; and
 - (h) acres designated as "Natural Area" per Title 77, chapter 12, part 1, MCA.
- (2) The department may account for other land use, development, and disposition in other department documentation, such as annual reports.
- (3) The department will report the results of the accounting to the board by August 2010 and every five years thereafter.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: It is reasonably necessary to adopt this new rule to clearly establish the requirements for accounting and reporting of project information every five years beginning in 2010, as provided in the ROD. This rule is consistent with the ROD.

NEW RULE XIV MANAGEMENT OF THE REAL ESTATE MANAGEMENT PLAN (1) In July 2010 and every five years thereafter, the Real Estate Management Bureau will issue a report upon the implementation and effectiveness

of the plan, including a recommendation on the need for significant changes to the plan.

(2) Upon review of such reports, the board or the department may consider a programmatic review of the plan for any of the following reasons:

(a) the thresholds in [NEW RULE XI(1)] have been exceeded;
(b) new legislation is adopted that is incompatible with the selected alternative;

(c) the board provides new direction; or
(d) the Trust Land Management Division administrator judges that the original assumptions supporting the plan no longer apply.

(3) The department may implement and initiate projects during a programmatic review of the plan.

(4) The department may make minor changes or additions to the plan without a programmatic review of the entire plan, as long as those changes are compatible with the overall plan, as determined by the department.

(a) Cumulative minor changes may result in the department's programmatic review of the plan.

AUTH: 77-1-209, 77-1-301, 77-1-603, MCA

IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: It is reasonably necessary to adopt this new rule to establish that the bureau will review the ongoing implementation of the plan, and issue a report of its review findings, every five years beginning in 2010. The rule further establishes the criteria that the board or department may use when considering a programmatic review of the plan based upon the bureau's findings. This rule is consistent with the ROD.

NEW RULE XV MINIMUM LEASE CALCULATION (1) Pursuant to 77-1-905(2), MCA, the department will set the minimum annual rent for any commercial lease to obtain the full market value of that lease. Such rental shall be at a rate not less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the current federally-guaranteed, annual, 20-year bond rate provided by the Montana Board of Investments commercial loan rate sheet. For the purpose of calculating the minimum annual rent, the department may round the 20-year rate to the nearest whole number.

AUTH: 77-1-209, 77-1-301, MCA

IMP: 77-1-605, 77-1-903, 77-1-912, MCA

REASONABLE NECESSITY: This rule is necessary to clarify the requirements of 77-1-905(2), MCA, to eliminate potential confusion.

NEW RULE XVI SURVEYING AND PLATTING OF LANDS PRIOR TO SALE
(1) The board delegates to the department, subject to its review, its authority under 77-1-301, 77-2-309, and 77-2-310, MCA, to determine whether it is in the best

interest of the trust beneficiaries to survey, plat, or create blocks and lots of state lands prior to sale.

(a) State trust lands may be sold under the Land Banking Program without added entitlements where:

- (i) it is in the best interest of the trust beneficiaries;
- (ii) additional entitlements are not in the interests of a local jurisdiction; or
- (iii) staff and budget constraints make it impractical to seek entitlements.

AUTH: 77-1-301, 77-2-309, 77-2-310, MCA

IMP: 77-1-301, 77-2-309, 77-2-310, MCA

REASONABLE NECESSITY: This rule is necessary to provide the department authority, subject to board review, to determine which tracts proposed for sale may be surveyed and platted in advance of taking the sale proposal to the board for approval. The rule further specifies the criteria that may be used to determine when to survey and plat tracts proposed for land banking.

NEW RULE XVII APPRAISAL OF LAND PRIOR TO LEASE OR EASEMENT

(1) Prior to offering a lease for competitive bid or an easement for sale, the department shall appraise the parcel under consideration for lease or issuance of an easement. The department may conduct the appraisal or the department may contract with a Montana-licensed certified general appraiser. The department shall review and approve an appraisal conducted by a contract appraiser.

(2) The appraisal must:

- (a) include state owned improvements in the valuation; and
- (b) use comparable sales for like properties.

(3) Appraisals must be updated or parcels reappraised:

- (a) where issuing a lease, if the appraisal is older than two years; and
- (b) where issuing an easement, if the appraisal is older than one year.

(4) Appraisals may be updated or reappraised earlier than as required in

(3)(a) and (b).

(5) Appraisals for sales, exchanges, and land banking are governed by ARM 36.25.805.

AUTH: 77-1-209, 77-1-301, MCA

IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is necessary to clarify that an appraisal has a limited life span, and the value it provides can, after a time, no longer ensure a fair return for use of state trust lands. Appraisals used to value easements and leases on state trust lands will be renewed or reviewed if older than one year, or two years, respectively.

NEW RULE XVIII CATEGORICAL EXCLUSIONS (1) Real estate

management activities that are classified as categorical exclusions shall not require an environmental assessment or environmental impact statement.

(a) Categorical exclusions include activities on state trust lands conducted by others under the authority of the department as well as activities conducted by the department itself.

(2) Categorical exclusions shall not apply in extraordinary circumstances where the Real Estate Management Bureau is proposing an activity:

- (a) upon sites with high erosion risk;
- (b) where federally listed threatened and endangered species or critical habitat for threatened and endangered species, as designated by the USFWS, may be affected;
- (c) where Native American religious and cultural sites may be affected;
- (d) where archaeological sites may be affected;
- (e) where historic properties and areas may be affected;
- (f) where several related, categorically-excluded individual activities may cumulatively result in significant impacts to the human environment because they will either occur close in time or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review; or
- (g) where the activity would result in a violation of any applicable state or federal laws or regulations.

(3) Pursuant to 77-1-121, MCA, and ARM 36.2.523(5), the board adopts the following additional categorical exclusions for real estate management activities conducted upon state trust lands:

- (a) lease and license administration including review, inspection, amendments, assignments, renewals, and enforcement of terms and conditions;
- (b) department review and approval of lease or license modifications, improvements, removal of improvements, and new utility service connections, consistent with applicable regulations;
- (c) adjustments to the boundaries of existing leases or licenses, consistent with applicable regulations;
- (d) planning and design;
- (e) project evaluation under [NEW RULE VI];
- (f) development of a site selection report under [NEW RULE VII];
- (g) project selection under [NEW RULE VIII];
- (h) development of the project management list under [NEW RULE IX];
- (i) marketing of state trust lands proposed for lease, license, or easement;
- (j) short-term land use licenses, involving no resource extraction or developed uses, and conforming to local permitting and land use regulations; and
- (k) other real estate management activities on state trust lands that are not in connection to:
 - (i) a department proposal for a sale, exchange, easement, placement of improvement, lease, license, or permit; or
 - (ii) a department review of an application for authorization of a sale, exchange, easement, placement of improvement, lease, license, or permit.

AUTH: 77-1-209, 77-1-301, MCA

IMP: 75-1-201, 77-1-121(4), 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to implement the categorical exclusions evaluated in the PEIS adopted July 18, 2005. These activities have been determined through the PEIS to not have effects on the human or natural environment.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Ethan Stapp, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620; telephone (406) 444-0518; fax (406) 444-2684; or e-mailed to estapp2@mt.gov, and must be received no later than 5:00 p.m. on October 9, 2008.

5. Ethan Stapp, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Adoption is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Adoption conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by telephone on August 25, 2008.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy H. Butler
TOMMY H. BUTLER
Rule Reviewer

Certified to the Secretary of State on September 2, 2008.